IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.7848 of 1992 & 11252 of 1993

1. Writ Petition No.7848 of 1992

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Between:

Narra Hymavathi W/o.late N.Chandra Sekhar Rao
Satyanarayanapuram Vijayawada

...PETITIONER

AND

1 The Joint Secretary to Government Transport, Roads & Buildings (TR.II)
Dept., Government of Andhra Pradesh Secretariat Buildings,
Hyderabad
2 The Sub-Collector and Land Acquisition Officer Vijayawada.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order particularly one in the nature of a writ of mandamus directing the 2nd respondent to pass an award under the provisions of the Land Acquisition on or before 3/10/1992 in respect of land of an extent of Ac.3.07 cents belonging to the petitioner in S.No.368/3,of Mogalrajapuram Village, Vijayawada (U) Mandal, Krishna District in pursuance of a declaration issued under Sec.6 of the Act on 4/10/1990.

Counsel for the Petitioner: MR.A.RAMALINGESWAR RAO

Counsel for the Respondents: GP FOR LAND ACQUISITION

2) WRIT PETITION NO.11252 of 1993

Between:

Narra Hymavathi W/o.late Chandra Sekhara Rao
Narravari Street Satyanarayanapuram
Vijayawada.

...PETITIONER

AND

1 The Commissioner of Land Reforms and Urban Land Ceilings,
Andhra Pradesh, Hyderabad.
2 The Special Officer and Competent Authority Urban Land Ceilings,
Vijayawada.
3 The Land Acquisition Officer and Sub-Collector Vijayawada.
4 The State of A.P., rep.by the Secretary
Revenue Department Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari or other appropriate order or direction calling for the records in the order Dt.3/5/93 bearing C.NO.AUC.2/5534/83 passed by the 1st respondent purporting to confirm the order of the 2nd respondent dt.4/10/1983 bearing CC.No.2762/83 and quash the same as illegal, arbitrary, as also Sec.10(3) Urban Land Ceiling Act notification issued in Andhra Pradesh Gazette Dt.27/5/1993, Part-II, and consequently direct the respondents 3 and 4 to complete the award enquiry and pay compensation to the petitioner forthwith in the interest of justice after setting aside the award Dt.10/6/1993 bearing No.22/93 of the 3rd respondent in so far as the petitioner is concerned "and to direct the respondents to redeliver the land which is not required and to pay compensation for use and occupation thereof and for adequate compensation for the land already used and built" as otherwise the petitioner will put to irreperable loss and damage.

Counsel for the Petitioner: MR.P.M.GOPAL RAO

Counsel for the Respondents: GP FOR ASSIGNMENT

The Court made the following:

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION Nos.7848 of 1992 & 11252 of 1993

COMMON ORDER:

Heard Sri P.Srinivas and Sri A.Ramalingeswar Rao, the learned counsel appearing for the petitioner who is common in both the Writ Petitions and the learned Government Pleader for Land Acquisition and the learned Government Pleader for Revenue (Assignments) appearing on behalf of the respondents.

Since commonly connected question arose in these two Writ Petitions, they have been taken up together for disposal.

In W.P.No.7848 of 1992, the petitioner, who is the wife of late N.Chandrasekhara Rao, who is the owner of the property in question, filed this Writ Petition seeking for a Writ of Mandamus, *inter alia*, for a direction to the second respondent to pass an Award under the provisions of Land Acquisition Act in respect of the land to an extent of Acs.3.07 cents in R.S.No.368/3 situated at Mogalrajapuram village, Vijayawada, Krishna District.

In the other Writ Petition, the same petitioner seeks to assail the orders of the second respondent dated 04.10.1983 as confirmed by the first respondent vide orders dated 03.05.1993 followed by the notice issued under Section 10(3) of the Urban Land Ceiling Act, dated 27.05.1993, by the second respondent as illegal and bad.

The facts leading to filing of these two Writ Petitions are to the effect that the respondents acquired the land in question as per the notification issued under Section 4(1) of the Land Acquisition Act on 26.11.1974, this was followed by the

declaration under Section 6 of the Act on 21.05.1977. In the meanwhile possession of the land was taken on 28.01.1976. Subsequently though enquiry was held, no award was passed in regard to the lands held by the petitioner. Even though in respect of the other lands, awards were passed on 22.04.1987 and 20.12.1983. Having regard to the introduction of Section 11A of the said Act with effect from 24.09.1984, the said acquisition proceedings were lapsed by 23.09.1986. Therefore, fresh notification under Section 4(1) of the Act was issued on 07.09.1989 followed by the declaration under Section 6 of the Act. Inspite of the same, no award was passed. Hence, the Writ Petition.

In the other Writ Petition No.11252 of 1993, the petitioner claims that having regard to the acquisition proceedings already initiated in respect of the lands by the competent Authorities and especially in view of the fact that the very land was earmarked for agriculture purpose as per G.O.Rt.No.958, dated 16.12.1969 followed by the proceedings under the Act, the question of applying the provisions of the Urban Land Ceiling Act does not arise and accordingly the authorities under the said Act could not have included the said land towards the holding of the petitioner. In fact, it is stated that having regard to the acquisition already made, it was not necessary for her to file declaration but however having regard to the other properties held, a comprehensive declaration was filed. There is no dispute to the fact that the possession was already taken by the Acquisition Authorities, however, the authorities without considering these aspects, rejected the petitioner's objection which was confirmed by the first respondent in appeal. Initially, the order was passed under Section 11© of the Act on 04.10.1983 and under Section 10(3) of the

Urban Land Ceiling Act a declaration was issued on 27.05.1993. Further, it is also the case of the petitioner that the entire land being agricultural land, the same is not covered by the provisions of the Urban Land Ceiling Act and therefore, they ought not to have included the same. Hence, the Writ Petition.

The learned counsel for the petitioner strenuously contended that basically in view of the fact that the land in question was earmarked for agriculture purpose and the same was already acquired, the same could not have made part of the Urban Land Ceiling and the petitioner cannot be deprived of her legitimate claim for compensation and therefore the entire action on the part of the respondents in not passing the Award was wholly unsustainable. Apart from the fact that the authorities under Urban Land Ceiling have included the entire land in respect of the acquisition.

The learned Government Pleader appearing on behalf of the respondents submitted that mere acquisition itself would not in any way take away the effect of the provisions of the Urban Land Ceiling Act and therefore the said lands have been rightly included and once the same fell well within the holding of the declarant, the question of payment of any compensation under the provisions of the Urban Land Ceiling Act does not arise. Even though the notification issued for acquiring of the lands, Awards have not been passed.

Considering these submissions and other submissions made on both the sides, the point which arises for consideration is as to whether on the facts and circumstances, the petitioners are entitled to claim compensation and request for passing of Award in terms of acquisition proceedings already initiated and consequently the land is liable to be excluded from the holding under the provisions of the Urban Land

Ceiling Act.

There is no serious dispute in regard to the chequered events as pointed out above. Admittedly, the land was earmarked for agricultural use as long back 16.12.1969 as per G.O.Rt.No.958. Subsequently, proceedings have been initiated for the purpose of acquisition and the possession was taken by the authorities on 18.06.1978. The only ground on which passing of the Award being stalled is that the land is falling well within the mischief of the provisions of the Urban Land Ceiling Act and therefore there is no necessity of passing of any Award.

Whereas on the other hand, it is contended that even though the land was acquired, the ample powers are confirmed under the provisions of Urban Land Ceiling Act to take over as surplus and therefore, there is no necessity to proceed with the acquisition.

Admittedly, in this case, the earliest notification under Section 4(1) was issued as long back as on 26.11.1974 followed by declaration on 21.05.1977. The land is earmarked for agriculture purpose. The provisions of the Urban Land Ceiling Act have come into force with effect from 28.01.1976. Therefore, it is quite amply clear that the acquisition proceedings were much prior to the enforcement of the Urban Land Ceiling Act. Merely because the earlier notification stood lapse in view of subsequent added provisions under Section 11(a) of the said Act, it cannot be said that the acquisition can be taken on the date of subsequent notification, which was issued in this case on 07.09.1989. Any such subsequent notification is shown a continuity but not a beginning. The beginning was already made much earlier to the

enforcement of the Urban Land Ceiling Act and the same is only being sought effect. Having given notifications twice, the land acquisition authorities are conveniently trying to take shelter under the provisions of the Urban Land Ceiling Act and avoiding opportunity of passing Award only on the ground that there is no such necessity. Basically from both the sides, the effect of the notification issued much earlier to the enforcement of the Urban Land Ceiling Act has not been kept, before any orders are passed either way. Once, there is already a notification in pursuance of the acquisition proceedings under the Act, it is that which prevails but not the subsequent notification issued especially where possession is already taken. In fact, the subsequent notification had to be issued in view of Section 11(c) of the Act since no Award was passed by the respondents. Therefore, the action on the part of the acquisition authorities in not passing the Award determining the market value in respect of the petitioner's land is totally erroneous, consequently the action on the part of the authorities under Urban Land Ceiling Act in not excluding the land which has already acquired much prior to the enforcement of the Act is also erroneous. Accordingly, both the Writ Petitions are allowed.

In the result, the Writ Petition No.7848 of 1992 is allowed directing the second respondent to take all such steps leading to passing of Award within a period of three months from the date of receipt of a copy of this order determining the market value in respect of the petitioner's land which has been acquired. No costs.

In the result, the Writ Petition No.11252 of 1993 is allowed setting aside the impugned orders dated 04.10.1983 and 03.05.1993 passed by the second

respondent and the first respondent respectively and the matter is remitted to the second respondent for fresh consideration and disposal in terms of the aforesaid observations after giving notice and opportunity to both the parties. No costs.

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B. PRAKASH RAO, J

19th April 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

Copy To

1 The Joint Secretary to Government Transport, Roads & Buildings (TR.II) Dept., Government of Andhra Pradesh Secretariat Buildings, Hyderabad

2 The Sub-Collector and Land Acquisition Officer Vijayawada.

3 The Commissioner of Land Reforms and Urban Land Ceilings, Andhra Pradesh, Hyderabad.

4 The Special Officer and Competent Authority Urban Land Ceilings, Vijayawada.

5 The State of A.P., rep.by the Secretary
Revenue Department Secretariat, Hyderabad.

6. Two CCs to G.P. for Land Acquisition, High Court Buildings, Hyderabad (OUT).

7 Two CCs to G.P. for Assignment, High Court Buildings, Hyderabad (OUT).

8 Two CD copies.